HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2) (b)

Description of the case.

WPMS No. 381/06

Smt. Asgari,

Vs.

Fazaldin, S/o Hazi
Karimmudin,

Approved for reporting

_____

~~Not approved for reporting~~

Date of decision 16.05.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO.381 (MS) OF 2006

Smt. Asgari,
D/o Hazi Karimmudin,
R/o Manglore, Pargana & Tehsil-Roorkee,
District-Haridwar. .....Defd/Petitioner.

Versus

1. Fazaldin, s/o Hazi Karimmudin, R/o Mohd. B ander Toll Pargana Manglor, Tehsil-Roorkee, District-Haridwar.
.....Plaintiff/Respondent.
2. Jayveer, S/o Dharamveer, R/o Village Liberheri, Pargana Manglor, Tehsil-Roorkee, District Haridwar.
3. Shah Jma, S/o M.S. Aarfin, R/o. Moh. Killa, Pargana Manglor, Tehsil-Roorkee, District Haridwar.
4. Yakoob, S/o Haquimuddin, R/o Mohalla Bandortoll Pargana Manglor, Tehsil-Roorkee, District Haridwar.
.....Respondents.

16.05.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Munish Bhardwarj, Advocate for the petitioner.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 10th March, 2006 passed by the Civil Judge (Junior Division), Roorkee (Annexure No.2 to the writ petition).

Briefly stated, a suit for permanent injunction was filed by the respondent no.1 against the respondent no. 2 and 3. over the property in dispute, which was registered as O.S. No. 118/2003 Fazaludin Vs. Jaiveer. The petitioner filed an application under Order 1 Rule 10 (2) along with Section 151

C.P.C. for impleadment of respondent no. 4, which was rejected by he trial Court but on filing the revision, the same was allowed as a necessary party.

During the trial of the case, 15 days' time was allowed to file written statement, but the application has been rejected. Since the written statement could not be filed, the petitioner applied for time and same was rejected by the impugned order dated 10th March, 2006.

The Apex Court in ***Kailash Vs. Nanhku and others 2005 AIR SCW 2346*** has held as under:-

"28. In the State of Punjab and another v. Shamlal Murari and another (1976) 1 SCC 719, the Court approved in no unmistakable terms the approach of moderating into wholesome directions what is regarded as mandatory on the principle that "prosessual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice." Ghanshyam Dass and others v. Dominion of India and others, (1984) 3 SCC 46, the Court reiterated the need for interpreting a part of the adjective law dealing with procedure alone in such a manner as to subserve and advance the cause of justice rather than to defeat it as all the laws of procedure are based on this principle.

30. In Sangram Singh v. Election Tribunal Kotah & another, (1955) 2 SCR 1, this Court highlighted 3 principles while interpreting any portion of the CPC. They are:

(i) A code of procedure must be regarded as such. It is 'procedure' some thing designed to facilitate justice and further its ends: not a penal enactment for punishment and penalties: not a thing designed to trip people up. Too

technical a construction of that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done to 'both' sides) lest the very means designed for the furtherance of justice be used to frustrate it.

(ii) There must be ever present to the mind the fact that our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them. Of course, there must be exceptions and where they are clearly defined they must be given effect to.

(iii) No forms or procedure should ever be permitted to exclude the presentation of the litigant's defence unless there be an express provision to the contrary."

Similar view has been taken in ***Vidyawati Gupta v. Bhakti Hari Nayak (2006) 2 Supreme Court Cases 777,*** after relying upon the judgment in ***Kailash Vs. Nanhku (2005) 4 SCC 480***. Relevant portion is quoted below:-

"In this regard, a reference was made to the decision of this Court in Sk. Salim Haji Abdul Khayumsab v. Kumar (2006) 1 SCC 46 wherein the provisions of Order 8 Rule 1, after amendment, were held to be directory on the reasoning that rules of procedure ore handmaids of justice and while the language employed by the draftsman of processual law may be liberal or stringent, the fact remains that the object of prescribing procedure is to advance the cause of justice. Reference was also made to the decision of this Court in Kailash v. Nankhu (2005) 4 SCC 480 wherein also while

considering the amended provisions of Order 8 Rule 1 of the Code of this Court held that unless compelled by express and specific language of the statute the provisions of the Code of any other procedural enactment ought not to be construed in a manner which would leave the Court helpless to; meet extraordinary situations in the ends of justice. This Court went on to hold that merely because the provision of law is couched in negative language implying a mandatory character, the same is not without exceptions and that the directions contained regarding the period for filing written statement in Order 8 Rule 1 of the Code was directory and not mandatory being procedural law."

The Apex Court in ***M.S. Grewal Vs. Deep Chand Sood (2001) 8 SCC 151*** has held as under:-

"Law Courts will lose their efficacy if they cannot possibly respond to the need of the society-technicalities there might be many but the justice-oriented approach ought not to be thwarted on the basis of such technicality since technicality cannot and ought not to outweigh the course of justice."

In view of the above, a writ of certiorari is issued quashing the order dated 10.03.2006 by which the court below has refused to permit the petitioner to file the written statement.

The Civil Judge is directed to decide the suit within a period of six months after accepting the written statement within a period of ten days from the date of presentation of the certified copy of this order.

Writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

16.05.2006
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